IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

J U D G M E N T

S.B. CIVIL SECOND APPEAL NO.322/04

Smt. Nirmala Vs. Distt Collector & Anr.

Against judgment and decree dated 31.08.2004 passed by Addl. District Judge No.1, Jodhpur in Civil Appeal No. 12/2004 – Smt. Nirmala Vs. District Collector, Jodhpur & Anr.

DATE OF JUDGMENT:: 9th January,2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. K.C. Samdariya for appellant.

BY THE COURT:

Heard learned counsel for the appellant-plaintiff at the admission stage.

The appellant having failed before two Courts below has approached this Court by filing the present appeal under Sec. 100 CPC, which has arisen out of the judgment and decree dated 31.08.2004 passed by learned Addl.

District Judge No.1, Jodhpur in Civil Appeal Decree No. 12/2004 – Smt. Nirmala Vs. District Collector, Jodhpur & Anr., filed against the judgment and decree dated 31.03.2003 passed by the Civil Judge (Junior Division), Jodhpur City in Original Civil Suit No.54/91 by the appellant-plaintiff dismissing the suit of the plaintiff for restoring possession and permanent injunction.

The facts, unfolded by the plaintiff are to the effect that adjacent to her property there was encroachment by her predecessor in title and she also came in possession of the said encroachment and to regularize the same she filed an application for allotment of the land as a strip of land. However, the authorities concerned removed the said encroachment and made the land open. The case of the plaintiff has been that she was in peaceful occupation and possession of the said land and due to adverse possession she had become the owner of the land but the possession was removed unauthorizedly.

The other side, denied any title vesting in the plaintiff in respect of the disputed land and stated that there were complaints against the plaintiff in respect of encroachment and the municipality removed the encroachment made on its land. It was also stated that the plaintiff has admitted that the disputed land was never allotted to her nor any file relating to that matter is available in the municipality and as such she has no case for restoring the possession.

The learned trial Court on the basis of the pleadings of parties framed issues and arrived at the conclusion that the plaintiff has failed to prove the issues in her favour and was not entitled to any relief. The learned first appellate Court has dismissed the appeal filed by plaintiff-appellant with cost of Rs.2,500/-.

The main contention of the learned counsel for the appellant has been that the

learned trial Court has infact not correctly appreciated the matter, particularly the documents Ex.1 & 2. According to the learned counsel, Issue No.3A relating to encroachment in 1958 by the predecessor in title of the plaintiff in respect of land shown in red and thereafter the plaintiff remaining in possession of the said land, and Issue No.3B relating to the plaintiff becoming owner of the land shown in map by red colour due to adverse possession, have wrongly been decided and that the suit was liable to be decreed. The learned counsel in support of his submission has relied upon M.K. Setty Vs. M.V.L. Rao (AIR 1972 SC 2299), Yadrao Dajiba Shrawane (d) by Lrs. Vs. Nanilal Harakchand Shah(d) & Ors. (JT 2002(5) SC 579) and Rampal & Anr. Vs. Phagua & Ors. (JT 2005(9) SC 47).

The principles, which have been laid in the authorities cited by the learned counsel, relate to appreciation of evidence and it has been propounded that in case the Courts

below have misread the evidence or have failed in appreciating the evidence completely, then in such matters interference can be made in second appeal.

I have considered the submissions and have gone through the authorities cited before me.

It is to be seen that in the plaint three stands have been taken by the plaintiff; one is that at the time when the plaintiff purchased the disputed land in the year 1967 there existed a boundary wall surrounding the property made of stone pattis and the land between the house and the land surrounding stone pattis was purchased by her. Another stand of the plaintiff is that infact that land was not purchased by her but it was a strip of land and for that matter she moved the municipal authorities to allot the same, and the last stand taken in the plaint is that since 1967 she was in peaceful possession of

the disputed land, as such she was entitled to retain it and on account of adverse possession she became the owner of the land.

In the written statement it has come that the land which the plaintiff is claiming does not belong to her, it cannot be disputed that the land in question is a Government land meant for road and had there been any sale in favour of the plaintiff, there would not have been an occasion for the plaintiff to have moved before the Municipal authorities to allot the strip of land.

The documents Ex.1 & 2, on the basis of which the plaintiff claims her right, are the Patta and the Site-Plan produced by her. In respect of these two documents, the learned trial Court has recorded its finding that had the plaintiff purchased the disputed land, it was not required by the plaintiff to have applied before the Municipal Authorities for allotment of the disputed land as a strip of

land. Regarding Site Plan (Ex.2), the finding has been recorded that the Ex.2, tendered in evidence, was said to have been prepared by one Shri Balkishan and has been proved by his son. According to the learned trial Court, it was not sufficient and further it was not proved as to whether Balkishan had any authority to make such plans. The learned trial Court also came to the conclusion that the documents tendered in evidence particularly Ex.8A, on the basis of which the plaintiff says that she purchased the property from Anantram, nowhere makes a mention of the fact that any such encroachment was made by Anantram and that the disputed land after making encroachment was given to the plaintiff. The learned trial Court also came to the conclusion that the wall made of stone pattis was demolished in the year 1993 and it found that appropriate evidence was not produced by the plaintiff to show that she was having adverse possession over the disputed land as no neighbourers or the person residing adjacent to the house has been produced in evidence. One

of the stands of the plaintiff was that infact the land which she is claiming was purchased from Anantram, however, document Ex.8A does not make mention of the fact that any such land which she is claiming to be her was purchased from Anantram. The learned trial Court, thus, came to the conclusion that the plaintiff was not able to prove the adverse possession. The plaintiff infact had encroached on some piece of land which was removed long back and she filed the suit for permanent injunction in order to grab the public land. Learned trial Court further found that in the year 1981 plaintiff applied for allotment of strip of land, therefore, the period prior to that cannot be considered for the purpose of determining the fact of adverse possession. It is also significant to mention here that the plaintiff in her statement has not stated that she had filed the suit on the basis of adverse possession rather she has stated that she filed the suit for declaration as the land was not of municipality.

In the other evidence of the plaintiff, PW2 Mohan Singh, who is husband of the plaintiff, has stated something different than what the plaintiff has stated. Mohan Singh has stated that the land was of municipality whereas the plaintiff says that the land was not of municipality. The trial Court came to the conclusion that the plaintiff was not able to prove issue No.3A and 3B and as such the other issues were disposed of accordingly. The findings recorded by the learned court have been affirmed by the first appellate Court giving detailed reasons. Thus, the matter appears to be one of encroachment on the public land and the courts below have given cogent reasons for the conclusions arrived at.

The matter has been dealt with in great details by the trial court and there appears no error in the findings arrived much less any error of law in dismissing the suit. The first appellate Court has also, giving substantial reasons based on settled law,

rightly dismissed the first appeal filed by the plaintiff and there is no illegality or perversity in the findings.

In Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar & Ors. [(1999) 3 SCC 722], the Hon'ble Supreme Court while considering the scope of Sec.100, indicated thus:-

> "It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at, by the last court of fact, being the first appellate court. It is true that lower appellate court should not ordinarily reject witnesses accepted by the trial court in respect of credibility but even where it has rejected the witnesses accepted by the trial court, the same is no ground for interference in second appeal when it is found that the appellate court has given satisfactory reasons for doing so."

Even otherwise, the learned counsel appearing on behalf of appellant could not make out any case or able to show any substantial law point involved in the second appeal requiring indulgence of this Court.

There being no substance and merit in the appeal, I hold that, in fact, no substantial question of law is involved. The substantial questions of law formulated by the appellant do not survive. The appeal, therefore, merits no consideration at all. The same is dismissed. No orders as to costs.

(SATYA PRAKASH PATHAK)J.

/jpa